

REMARKS

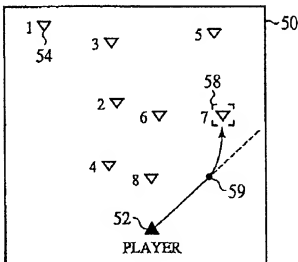
Claims 21, 23, 25, 29, 31-32, 35-37 and 40-42 are pending. Claims 30, 33, 38, 39, 43 and 44 have been withdrawn by the Examiner. Claims 21, 23, 25, 29-31 and 35-41 have been amended. Applicants reserve the right to pursue the original and other claims in this and in other applications.

Applicants believe that many of the independent claims are generic (e.g., claim 21) and, upon the allowance of these claims, Applicants respectfully request that the withdrawn claims be rejoined and allowed as well.

Claims 21, 23, 25, 29, 31, 32, 35-37 and 40-42 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The rejection is respectfully traversed.

A portion of this rejection relates to the claim terms “lock” and “locked-on.” Applicants respectfully submit that Figure 2C (reproduced below) illustrates the player locking onto the target to be attacked (i.e., marked target 58).

FIG. 2C



The corresponding text in the specification uses the words “mark” and “qualified” instead of the claim terms lock or locked. Applicants note, however, that:

[a] description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97. In rejecting a claim, the examiner must set forth express findings of fact regarding the above analysis which support the lack of written description conclusion. These findings should:

(A) Identify the claim limitation at issue; and

(B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of “unpredictability in the art” is not a sufficient reason to support a rejection for lack of adequate written description.
M.P.E.P. § 2163.III.A (emphasis added).

Applicants respectfully submit that the Office Action has not followed the above guidelines set forth in the M.P.E.P. and has not overcome the presumption that the description is adequate. Prior Office Actions had the same problems. Instead, the Office Action generally states that “the claims include the following recitations, which lack support in the original specification and is thus deemed new matter.” Office Action at 2. No other explanation or “findings of fact” is provided. Clearly, the Office Action’s explanation does not establish a *prima facie* case by “providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed.”

Applicants also take the opportunity to remind the Examiner that the “subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.” M.P.E.P. §2163.02. Furthermore,

[t]he inquiry into whether the description requirement is met must be determined on a case-by-case basis and is a question of fact. *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims.
M.P.E.P. §2163.04 (emphasis added).

The Office Action has not complied with these requirements. In any event, to further the prosecution of the application, the relevant claims have been amended to address this portion of the Examiner's concern.

The Office Action has also objected to the language "excluding any target character which is currently in the outer zone and any target character which has moved in the second zone from the outer zone within said certain period of time." Applicants respectfully submit that this claim feature is shown in at least Figures 4 (step S24), 6 (step S38) and 8 (step S56). These figures and the corresponding description use the term "omit" rather than excluding. Again, as set forth above, the "subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement." M.P.E.P. §2163.02. Although Applicants believe that no changes are required, Applicants have amended the relevant claims to recite "omits" rather than excluding to ensure clarity of the claimed subject matter.

Accordingly, the rejection should be withdrawn and the claims allowed.

Claim 21 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Office Action states that the preamble "[a] game program computer readably stored" is unclear. The rejection is respectfully traversed. Claim 21 has been amended to recite a "non-transitory computer readable storage medium with an executable game program stored

thereon” as set forth in the Patent Office’s guidelines. Accordingly, the rejection should be withdrawn and the claim allowed.

Claims 21, 23, 25, 29 and 35-37 stand rejected under 35 U.S.C. 101. The rejection is respectfully traversed. The claims have been amended to include the term “non-transitory” in accordance with the Examiner’s request and in accordance with the example guidelines provided on the Patent Office’s website. As such, the rejection should be withdrawn and the claims allowed.

Claims 35-37 and 40-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Falcon. The rejection is respectfully traversed.

Claim 35 recites a “non-transitory computer readable storage medium with an executable game program stored thereon.” The claim 35 program instructs a computer to “(c) set a first zone, a second zone set outside of and next to the first zone, and an outer zone set outside of and next to the second zone at every time when the player character moves in the game space, wherein said first, second and outer zones are defined within said visual range based on one of distances from a reference point and angles from a reference line, which reference point or line is defined based on the current location of the player character, so that said first zone is nearest to the reference point or line.” Applicants respectfully submit that Falcon fails to teach or suggest this limitation.

Falcon relates to flight simulation of an F-16 aircraft. The flight simulation is seen through radar screens (e.g., Figure 13-1) or simulated console (e.g., Figure 13-2). As acknowledged in the Office Action, Falcon discloses that the “F-16 has several different radar modes, some for use within visual range and others for beyond visual range.” Falcon 4-2; see also Falcon 4-6 (“The two primary air-to-air radar modes used for finding BVR (Beyond Visual Range) targets are RWS . . . and TWS”). Since Falcon is concerned with targets “beyond” the visual range of the F-16’s pilot, Falcon is teaching away from the claimed invention’s first, second and outer zones, which “are defined within said visual range” as “viewed from the player character.” This is one reason why the claim is allowable. Applicants have made this argument before, but the Office Action simply states that Applicants’ prior arguments are not persuasive. Office Action at 8. Moreover, the Examiner

has not shown what the “zones” are in Falcon or how they are defined “within said visual range based on one of distances from a reference point and angles from a reference line, which reference point or line is defined based on the current location of the player character, so that said first zone is nearest to the reference point or line.”

Claim 35 further requires that the computer, in response to the game program, will “(d) detect a current location value of the parameter with respect to each of said plurality of target characters displayed within the visual range.” Again, the location value is based on the targets “displayed within the visual range” and Falcon has radars that go beyond visual range. Applicants also question how this limitation is met by page 21-11’s “example where the distance and space between game character and other objects are continuously tracked in the video game” as suggested by the Office Action. Page 21-11 is showing a radar display or “B-Scope” of radar contacts and the Office Action has not established the claimed zones.

Claim 35 also recites that the computer, in response to the game program, will “(e) select any target character which has been in the first zone within a certain period of time while omitting any target character which has been in the outer zone within said certain period of time.” As mentioned above, the Office Action has never actually shown where Falcon has defined the first, second and outer zones. It follows that the Office Action and Falcon cannot show selecting target characters that have been in the first zone within a certain period of time while omitting any target character that has been in the outer zone within said certain period of time.

For this limitation, the Office Action merely states that “any targets within *weapon* distance range are attackable by the player aircraft, whereas any targets within *weapon* distance range(s) are attackable by the player aircraft and any targets outside the *weapon* distance range(s) are safe from attack.” Office Action at 6 (emphasis added). This shows the continued misapplication of the Falcon reference to the claims. The claims are directed to zones within the player’s *visual* range, but the Office Action cites to the F-16’s *weapon* range, which has little to do with the player’s visual range because Falcon goes “beyond visual range.” Moreover, there is no

cite for the Office Action's argument with respect to this element; all that is provided is the Examiner's conjecture on what Falcon teaches.

Claim 35 also recites that the computer, in response to the game program, will "(f) invest recommended priorities of selections to the respective target characters selected at (c) as candidate objects for attack in accordance with the current locations so that the candidate object located nearer to the reference point or line is given with the higher priority." This limitation is very specific as to how priorities are assigned in the claim. The Office Action, however, argues that:

Pg. 4-2, discloses radar modes, some radar modes are for use within visual range and others for *beyond visual range*, for example, pg. 4-6 discloses BVR (Beyond Visual Range), also note, *weapon ranges* are based on distances, for example, see pg. 4-25, discloses SRM (short-range *missile*), and MRM (Medium-Range *Missile*), and pg. 21-25, discloses long-range radar-guided *missiles*, thus, there are instances where a target is available for an attack, and safe from an attack based on distances and positions relative to a player aircraft, note pg. 4-8 provides specific examples of ranges in terms of miles. Office Action at 6 (emphasis added).

Again, the Office Action refers to "beyond visual range" and "weapon ranges." This cannot be read on the claims. Moreover, the Office Action speculates as to the "instances" allegedly found in the cited pages and how they relate to the claim language. Nothing in the cited passages or the Office Action's reading of these passages teaches the limitation that "the candidate object located *nearer* to the reference point or line is given with the *higher* priority" as is recited in the claim. This misapplication of Falcon is compounded in the Office Action's reading of Falcon on limitation (g). As recited in claim 35, the computer, in response to the game program, will "(g) allow the player to change the candidate object for attack, in accordance with the order of the priorities sequentially from the higher to the lower in response to operation by the game player." Here, the Office Action mistakenly argues:

Lacking distinguishing features, see pps. 4-13 to 4-14 discloses the radar immediately locking onto the first targets it sees, and allowing the player to cursor through targets to select, lock, and attack a target of his/her choice, targets selection order is based the order in which

the target objects appear within the radar screen of the player's aircraft, in this case, the selection order is decided by the (sic) which objects are closest to the player's aircraft.
Office Action at 6.

This argument is purely based on the Examiner's speculation, as it has little to do with what's written in the cited passages. The Examiner has made a leap of faith that the radar locking onto the first object it sees means "in this case, the selection order is decided by the which objects are closest to the player's aircraft." Applicants submit that the first object a radar sees is the first object in the radar's sweep, which is based on the sweeps direction and not the distance from the aircraft. This is another reason why the claim is allowable.

For at least the above reasons, claim 35 is allowable over Falcon and the reading of Falcon that the Examiner has set forth in the Office Action. Claims 36, 37 and 40-42 are allowable for at least the same reasons. Moreover, Applicants note that the rejection is based on 35 U.S.C. § 103(a), but that the Office Action has provided *no* analysis under the Supreme Court's *KSR* decision to support its rejection. This is another reason why the rejection should be withdrawn and the claims allowed.

In view of the above, Applicants believe the pending application is in condition for allowance.

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Respectfully submitted,

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